

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI**

LIBERTY LIFE INSURANCE COMPANY,

Plaintiff,

v.

ONE BEACON INSURANCE COMPANY
and RESOLUTE MANAGEMENT, INC.

Defendants.

WD Case No.: 4:08-cv-00955-REL

Jackson County Case No.: 0816-CV34305

NOTICE OF REMOVAL

COMES NOW Defendant One Beacon Insurance Company (“One Beacon”), by and through the undersigned counsel, and pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 hereby files its Notice of Removal of the above-styled case to the United States District Court for the Western District of Missouri. Defendant asserts the following grounds supporting removal:

1. The above-captioned case was filed in the District Court of Jackson County, Missouri, Case Number 0816-CV34305, on October 31, 2008.

2. Plaintiff is a South Carolina corporation. *See* ¶ 6 of Plaintiff’s Petition, attached as Exhibit A. Defendant One Beacon is incorporated in the state of Massachusetts with its principal place of business in Canton, MA. *See* ¶ 7 of Plaintiff’s Petition and Exhibit B, Affidavit of Daniel Tarr. Defendant Resolute is a Delaware corporation with its principal place of business in Omaha, Nebraska. *See* ¶ 9 of Plaintiff’s Petition and Exhibit C, Affidavit of Daniel Tarr. Therefore, complete diversity exists.

3. One Beacon received service of this lawsuit on December 2, 2008.

Resolute received service of this lawsuit on December 1, 2008. Removal is therefore timely.

4. This case is removable pursuant to 28 U.S.C. § 1332(a)(1) in that the amount of controversy exceeds \$75,000.00 exclusive of interest and costs, and is between citizens of different states.

5. A copy of all process, pleadings, and orders served upon Defendant One Beacon is attached hereto as Exhibit D.

WHEREFORE Defendant One Beacon requests the above-captioned matter be removed from the Circuit Court of Jackson County, Missouri, to the United States District Court for the Western District of Missouri.

Dated this 12th day of December, 2008.

/s/ Bradley J. Baumgart

Bradley J. Baumgart MO # 28098
Larry D. Fields MO # 39426
Angela M. B. Kassube MO # 59173
KUTAK ROCK LLP
Suite 500
1010 Grand Boulevard
Kansas City, MO 64106-2220
(816) 960-0090 (Telephone)
(816) 960-0041 (Facsimile)
Email: brad.baumgart@kutakrock.com
Email: larry.fields@kutakrock.com
Email: angela.kassube@kutakrock.com
ATTORNEYS FOR DEFENDANTS
ONEBEACON INSURANCE
COMPANY AND RESOLUTE
MANAGEMENT, INC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing document was filed electronically with the above-captioned court, with notice of case activity to be generated and sent electronically by the Clerk of said court (with a copy to be mailed to any individuals who do not receive electronic notice from the Clerk) this 12th day of December 2008, to:

Lawrence A. Rouse
Daniel E. Blegen
ROUSE HENDRICKS GERMAN MAY PC
1010 Walnut Street, Suite 400
Kansas City, MO 64106
(816) 471-7700 (Telephone)
(816) 471-2221 (Facsimile)
Email: larryr@rhgm.com
Email: danb@rhgm.com
ATTORNEYS FOR PLAINTIFF

/s/ Bradley J. Baumgart

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

LIBERTY LIFE INSURANCE COMPANY,)

Plaintiff,)

v.)

Case No. 0816 - CV 34305

ONEBEACON INSURANCE)
COMPANY)

Division No. 4

Serve:)

c/o Director of Insurance)
301 W. High Street)
Room 530)
Jefferson City, MO 65101)

And)

RESOLUTE MANAGEMENT, INC.)

Serve:)

Corporation Service Company)
2711 Centerville Road, Suite 400)
Wilmington, DE 19808)

Defendants.)

PETITION

Plaintiff Liberty Life Insurance Company ("Liberty") for its Petition against
defendants OneBeacon Insurance Company ("OneBeacon") and Resolute Management, Inc.
("Resolute"), states as follows.

INTRODUCTION

1. Defendant OneBeacon issued Commercial General Liability ("CGL")
insurance policies to Liberty, formerly known as Business Men's Assurance Company ("BMA"),
to cover Liberty for loss resulting from, among other things, exposure of workers at the BMA
Tower in Kansas City, Missouri to asbestos.

EXHIBIT

A

2. Four Operating Engineers, who worked at the BMA Tower between 1970 and 2002, filed a lawsuit against BMA seeking damages resulting from their exposure to Asbestos (the “Asbestos Lawsuit”). Three of those Operating Engineers were exposed during time periods covered by CGL policies issued by OneBeacon (the “Covered Claims”).

3. Liberty reached a settlement of the Covered Claims by the three Operating Engineers, the total amount of which was within the coverage limits of the CGL policies issued by OneBeacon.

4. In breach of the CGL policies, and in bad faith, OneBeacon refused to indemnify Liberty and participate in the settlement as required by the insurance contracts and Missouri law.

5. As a result, Liberty and its other insurance carriers were forced to settle the claims without Resolute and OneBeacon, and Liberty was forced to pay the portion of the settlement that should have been paid by OneBeacon.

PARTIES AND JURISDICTION

6. Liberty is a South Carolina corporation in good standing and was the owner of the BMA Tower in Kansas City at all times relevant to this Petition.

7. One Beacon is a Massachusetts-based insurance company that is licensed to do business in the State of Missouri.

8. OneBeacon is the successor corporation to Commercial Union Insurance Company (“Commercial Union”), the company that originally provided the CGL policies at issue in this lawsuit.

9. Resolute is a Delaware corporation with its principal place of business in Omaha, Nebraska. Resolute operates as a third-party claims adjuster retained by OneBeacon to adjust claims against its policies. Resolute is not owned by OneBeacon.

10. Venue is proper in this County pursuant to Mo.Rev.Stat. § 508.010 as the plaintiff was injured in Jackson County, Missouri.

11. This Court has jurisdiction over the defendants under Mo.Rev.Stat. § 506.500, in that the contracts were entered into in this state, the tortious acts were committed in this state, and the contracts insured a risk located in this state.

GENERAL ALLEGATIONS

A. The CGL Insurance Policies

12. OneBeacon's predecessor corporation, Commercial Union, entered into CGL insurance contracts with Liberty numbered CWD956296, CKE595144, and CKE873689 (the "OneBeacon Policies").

13. The OneBeacon Policies covered the time period October 29, 1977 through October 29, 1984.

14. The OneBeacon Policies covered, among other losses, claims resulting from exposure to asbestos.

15. Resolute is a claims adjuster that, at all times relevant to this Petition, acted as the agent and representative of OneBeacon in adjusting the claims asserted in the Asbestos Lawsuit.

B. The Asbestos Lawsuit

16. Lloyd Gregory was employed as an Operating Engineer in the BMA Tower from 1970 to 1994. Gregory claimed in the Asbestos Lawsuit that he was injured due to workplace exposure to asbestos during the entire time of his employment.

17. Lester Taylor was employed as an Operating Engineer in the BMA Tower from 1972 to 1995. Taylor claimed in the Asbestos Lawsuit that he was injured due to workplace exposure to asbestos during the entire time of his employment.

18. Charles Lute was employed as an Operating Engineer in the BMA Tower from 1978 to 2001. Lute claimed in the Asbestos Lawsuit that he was injured due to workplace exposure to asbestos during the entire time of his employment.

19. In the Asbestos Lawsuit, Gregory, Taylor, and Lute claimed that they had been injured, and feared further injury, due to their exposure to asbestos.

20. Gregory, Taylor, and Lute claimed damage in excess of \$1 million each as a result of their exposure.

21. Resolute and OneBeacon, together with Liberty's other insurance carriers, agreed to defend Liberty in the Asbestos Lawsuit.

22. Neither OneBeacon nor Resolute made a timely reservation of rights with regard to the claims in the Asbestos Lawsuit.

C. The Asbestos Lawsuit Settlement

23. A mediation to address the Gregory, Taylor, and Lute claims was held on October 9, 2008, in advance of a November 10, 2008 trial setting.

24. At the mediation, trial counsel was not provided sufficient authority by Resolute to continue negotiations. As a result of Resolute's refusal to meaningfully participate in the mediation, the mediation was unsuccessful.

25. On October 15, 2008, Liberty forwarded to Resolute an evaluation of the claims by trial counsel and made a demand upon Resolute to increase the amount of its participation to allow for an additional settlement offer to be made.

26. This increase in the settlement offer was supported by Liberty, each of Liberty's other insurance carriers, and trial counsel.

27. On October 16, 2008, Resolute responded to Liberty's demand but refused to authorize any additional funds for settlement.

28. On October 23, 2008, plaintiffs Gregory, Taylor, and Lute made specific settlement demands on Liberty that were within the policy limits of the OneBeacon Policies.

29. Upon receipt of the specific demands within policy limits, Liberty made a demand on Resolute that OneBeacon settle the claims by Gregory, Taylor, and Lute.

30. Resolute and OneBeacon refused to settle the Gregory, Taylor, and Lute claims, despite demands within policy limits.

31. Settlement discussions continued between trial counsel, the independent counsel retained by Liberty's insurance carriers (including Resolute and OneBeacon), and plaintiffs, despite the refusal of Resolute and OneBeacon to increase their overall valuation of the claims and settlement authority, eventually focusing on a specific potential payment to each claimant.

32. The mediator, trial counsel, Liberty, Liberty's other insurance carriers, and the insurance carrier's independent counsel, all agreed that the proposed settlement offer for each

claimant was a reasonable settlement considering the range of potential jury verdicts and the ability to immediately settle all potential claims for future injuries arising from the exposure to asbestos.

33. In view of these evaluations, Liberty again made demand upon Resolute to settle the Gregory, Taylor, and Lute claims. Resolute and OneBeacon again refused.

34. Resolute insisted that no settlement should exceed its much lower valuation for each claimant, and Resolute refused to contribute more than a combined total of \$77,958.

35. Resolute's stated reason for refusing to settle the Gregory, Taylor, and Lute claims was that it did not believe the evaluations by the other insurance carriers, Liberty, trial counsel, and the insurance carrier's independent counsel, that the settlement amounts were reasonable.

36. Resolute stated that the settlement amounts being discussed were not in line with the value it had placed on claims against other companies in other jurisdictions, and that it was concerned the settlement amounts being discussed for Gregory, Taylor, and Lute would negatively impact other claims it was handling for its clients.

37. Resolute and OneBeacon refused to authorize settlement solely to protect themselves against claims asserted against other CGL insurance policies issued to other companies, and without regard for their duties to Liberty on the OneBeacon Policies at issue in this lawsuit.

38. In order to achieve a settlement and resolve the claims on the reasonable terms negotiated with plaintiffs, Liberty was forced to pay the entire portion of the settlement that should have been funded by OneBeacon.

39. All General Allegations in the proceeding paragraphs are hereby incorporated by this reference into all counts.

**COUNT I –BREACH OF CONTRACT
AGAINST ONEBEACON**

40. OneBeacon and Liberty are parties to the OneBeacon Policies.

41. The OneBeacon Policies cover some or all of the claims asserted by plaintiffs Gregory, Taylor, and Lute in the Asbestos Lawsuit.

42. OneBeacon did not meet its obligation to settle the claims of Gregory, Taylor, and Lute.

43. As a result of such failure, OneBeacon breached its obligations under the OneBeacon Policies.

44. Liberty was thereby damaged.

WHEREFORE, Plaintiff Liberty respectfully requests this Court find in favor of Liberty on this Count and award damages against OneBeacon, costs in this action, and such other and further relief as the Court deems just and necessary.

**COUNT II –BREACH OF CONTRACT
AGAINST RESOLUTE**

45. Liberty is a third-party beneficiary of a contract between Resolute and OneBeacon, in which Resolute was to adjust claims made against the OneBeacon Policies in accordance with the policy language and Missouri law.

46. Resolute did not meet its obligations under its contracts with OneBeacon.

47. As a result of such failure, Resolute breached its obligations to OneBeacon and Liberty.

48. Liberty was thereby damaged.

WHEREFORE, Plaintiff Liberty respectfully requests this Court find in favor of Liberty on this Count and award damages against Resolute, costs in this action, and such other and further relief as the Court deems just and necessary.

**COUNT III – BAD FAITH REFUSAL TO SETTLE
AGAINST ALL ONEBEACON AND RESOLUTE**

49. OneBeacon and Resolute assumed control of negotiation, settlement, and defense of the Asbestos Lawsuit.

50. Liberty demanded that OneBeacon and Resolute settle the Gregory, Taylor, and Lute claims.

51. OneBeacon and Resolute refused to settle the claims within their liability limits.

52. OneBeacon and Resolute acted in bad faith, rather than negligently, in refusing to settle.

WHEREFORE, Plaintiff Liberty respectfully requests this Court find in favor of Liberty on this Count and award damages against the defendants, award punitive damages against the defendants for their bad faith refusal to settle the Covered Claims, costs in this action, and such other and further relief as the Court deems just and necessary.

**COUNT IV – VEXATIOUS REFUSAL TO PAY
AGAINST ONEBEACON**

53. OneBeacon issued the OneBeacon Policies to Liberty that are applicable to the Covered Claims by Gregory, Taylor, and Lute.

54. A loss has occurred under the OneBeacon Policies with regard to the Covered Claims.

55. OneBeacon has refused to pay the loss without reasonable cause or excuse.

56. As a result of OneBeacon's vexatious refusal to pay the Covered Claims, Liberty has been damaged.

WHEREFORE, Plaintiff Liberty respectfully requests this Court find in favor of Liberty on this Count and award damages against the OneBeacon, award statutory damages against OneBeacon, together with interest and attorney's fees, costs in this action, and such other and further relief as the Court deems just and necessary.

**COUNT V – TORTIOUS INTERFERENCE WITH CONTRACT
AGAINST RESOLUTE**

57. Liberty entered into the OneBeacon Policies with OneBeacon.

58. OneBeacon breached the OneBeacon Policies.

59. Resolute, by its refusal to participate in settlement negotiations and refusal to allow OneBeacon to participate in the settlement of the Covered Claims, tortiously interfered with the OneBeacon Policies and caused OneBeacon to breach those contracts.

60. Resolute did so intentionally and without justification or excuse.

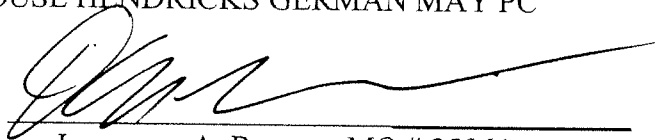
61. As a result of Resolute's tortious interference, Liberty has been damaged.

WHEREFORE, Plaintiff Liberty respectfully requests this Court find in favor of Liberty on this Count and award damages to Liberty and against Resolute, award punitive damages against Resolute for its tortious interference with contract, costs in this action, and such other and further relief as the Court deems just and necessary.

Respectfully submitted,

ROUSE HENDRICKS GERMAN MAY PC

By



Lawrence A. Rouse MO # 25064

Daniel E. Blegen MO # 47276

1010 Walnut Street, Suite 400

Kansas City, MO 64106

Tele: (816) 471-7700

Fax: (816) 471-2221

Email: larryr@rhgm.com

Email: danb@rhgm.com

ATTORNEYS FOR LIBERTY LIFE INSURANCE
COMPANY

SCRIPPS